



## BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

### Advisory Opinion No. 04-014AO

A county contractor asks whether he is a “public employee” within the meaning of Chapter 19, the County’s ethics law. We conclude that an independent contractor is not a “public employee” within the meaning of the County’s ethics law. But an independent contractor is subject to those portions of the ethics law regulating “persons” and also subject to §§ 11B-50 through 11B-55 of the County’s procurement law (“Ethics in Public Contracting”).

An independent contractor does not fall within the definition of public employee in § 19A-4(m) of the ethics law. But an independent contractor is a “person” and some provisions of the ethics law regulate the conduct of “persons,” not just public employees. For example, § 19A-12(d) prohibits any person from knowingly employing a public employee, absent Commission approval. Section 19A-14(b) prohibits any person from using an official County or agency title or insignia in connection with any private enterprise. And § 19A-14(f) prohibits any person from influencing or attempting to influence a public employee to violate the ethics law.

Also, independent contractors are subject to §§ 11B-50 through 11B-55 of the County’s procurement law (“Ethics in Public Contracting”). This is true even if the contract is exempt from the other provisions of the procurement law under § 11B-4.

Thus, although an independent contractor is not a “public employee” within the meaning of the ethics law, he is subject to those portions of the ethics law regulating “persons” and also subject to §§ 11B-50 through 11B-55 of the County’s procurement law (“Ethics in Public Contracting”).

Finally, this opinion does not address any ethics laws that an independent contractor may contractually tie himself to.

FOR THE COMMISSION:

Elizabeth K. Kellar, Chair

January 26, 2005

Date